

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 859 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES

2. To be referred to the Reporter or not? NO

3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO.

AMBUBHAI C CHAUDHARI

Versus

STATE GOVERNMENT

Appearance:

MR SG UPPAL for Petitioner
MR KP RAVAL,APP for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 24/07/97

ORAL JUDGEMENT

1. This appeal under Section 374 of the Code of Criminal Procedure, 1973 is directed against the judgment and order dated September 12, 1988, rendered by the learned Additional Sessions Judge, Surat, in Sessions Case No.113 of 1988, convicting the appellant under

Section 302 of the Indian Penal Code and sentencing him to R.I. for life.

2. Deceased Sukliben was resident of village Vanskui. The incident in question took place on March 1, 1988. The wife of the respondent had given birth to a baby-girl 2 months prior to the date of incident. However, daughter of the appellant died after 5 days of her birth. The appellant had suspicion that deceased Sukliben was a witch and had dealing with devils and as she had practised sorcery, his daughter had died. In the evening of the day on which incident took place, the deceased had gone to village well for fetching water. On spotting the deceased near the well, the appellant was enraged. He went to his residence and came back with an axe. The appellant gave axe blow on the head of the deceased, as a result of which Sukliben died on the spot. Rameshbhai Sombhai who had witnessed the incident was on his way to outpost for lodging complaint, but on way he met Babubhai Premabhai, son of deceased Sukliben and informed him about the incident. Therefore, Babubhai went to Madhi outpost in company of Rameshbhai for lodging the First Information Report. The information given by Babubhai was reduced into writing by Bhikhabhai Naguji Patil who was discharging duties as Jamadar at the outpost. Thereafter, the Jamadar forwarded the complaint and the complainant to Bardoli Police Station. At Bardoli Police Station, the first information was registered by P.S.I. Mr. Shukla. The information lodged by Babubhai was investigated and at the conclusion of investigation, the appellant was chargesheeted in the court of learned Judicial Magistrate First Class, Bardoli for the offence punishable under Section 302 of the Indian Penal Code.

3. As the offence under Section 302 of the Indian Penal Code is exclusively triable by Court of Sessions, the case was committed to Sessions Court where it was numbered as Sessions Case No.113 of 1988. The learned Judge framed necessary charge against the appellant at Exh.2. The charge was read over and explained to the appellant who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore examined (1) Ranjitbhai Savjibhai Raval PW 1 Exh.6 (2) Babubhai Premabhai PW 2 Exh 8 (3) Sanmukhbhai Karsanbhai Chaudhri PW 3 Exh.10 (4) Rameshbhai Sombhai Chaudhri PW 4 Exh.16 (5) Padmaben Rameshbhai Sombhai PW 5 Exh.17 (6) Pallaviben Ratilal Chaudhri PW 6 Exh.18 (7) Chandanben RAtilal Sombhai PW 7 Exh.19 (8) Deviben Sumanbhai PW 8 Exh.20 (9) Jashiben Vestabhai PW 9 Exh.21 (10) Tarulataben Balubhai Chaudhri PW 10 Exh.22 (11)

Hasumatiben Sumanbhai Chaudhri PW 11 Exh.23 (12) Ilaben Sumanbhai Chaudhri PW 12 Exh.24 (13) Nikunj Rameshbhai PW 13 Exh.25 (14) Lalsing Dhanabhai PW 14 Exh.26 (15) Navinchandra Maganlal PW 15 Exh.28 and (16) Kailashnath S. Shukla PW 16 Exh.30, to prove its case against the appellant. The prosecution also led documentary evidence such as complaint lodged by Babubhai, post mortem notes of the deceased, Panchnamas prepared during the course of investigation etc. in support of its case against the appellant.

4. After recording of evidence of prosecution witnesses was over, the learned Judge questioned the appellant generally on the case and recorded his statement under Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the appellant denied the case of the prosecution, but did not lead any evidence in his defence.

5. On appreciation of evidence, the learned Judge held that the prosecution proved its case against the appellant beyond reasonable doubt. The learned Judge therefore, convicted the appellant under Section 302 of the Indian Penal Code and imposed sentence on the appellant by the impugned judgment giving rise to the present appeal.

6. Mr. S.G. Upal, learned counsel for the appellant has taken us through the entire evidence on record. Learned counsel for the appellant submitted that the prosecution has examined only relatives of the deceased, and therefore, the interested version of the relatives of deceased should not be accepted by the court in absence of any corroboration by other independent evidence. Learned counsel for the appellant pleaded that though the incident was alleged to have been witnessed by many, no independent witnesses have been examined by the prosecution, and therefore, after drawing an adverse inference against the prosecution, the appellant should be acquitted. In the alternative, it was claimed that because of superstition prevailing in backward area from which the appellant hails, the appellant had suspicion that his daughter had died because the deceased was a witch and practised sorcery, and therefore, giving of one axe blow to the deceased would bring case of the appellant either under Section 304 part I or 304 part II of the Indian Penal Code, and therefore, the sentence imposed on the appellant should be suitably modified.

7. Mr. K.P.Raval, learned A.P.P. submitted that the relatives of the deceased who were present at the

time when the incident took place have deposed before the court in most natural manner and as there are no major contradictions in their evidence, their version deserves to be accepted. It was pleaded on behalf of the State Government that deceased who was not armed with any weapon was assaulted by the appellant with a dangerous weapon like an axe and the appellant had given blow on vital part of the body with such a force that the deceased had died on the spot, and therefore, conviction of the appellant under Section 302 of the Indian Penal Code should not be interfered with by the court.

8. The finding that deceased Sukliben died a homicidal death is not challenged before us in the present appeal. Eye witnesses (1) Rameshbhai (2) Nikunjhbhai (3) Padmaben (4) Jashuben (5) Tarulataben (6) Hasumatiben (7) Ilaben (8) Deviben (9) Pallaviben and (10) Chandanben have stated in their evidence that deceased had sustained injury by means of an axe. The prosecution has produced inquest report at Exh.11 on the record of the case. It may be stated that the inquest report has been admitted and read in evidence with the consent of the defence. From the inquest report also it is evident that the deceased had injury on her head. Dr. Ranchhodbhai Savjibhai Raval who had performed post mortem on the dead body of deceased Sukliben is examined by the prosecution as PW No.1 at Exh.6. In his deposition the doctor has mentioned in detail the external as well as internal injuries which were noticed by him while performing autopsy. The doctor has produced post mortem notes at Exh.7. The external and internal injuries which are mentioned by the doctor in his substantive evidence are also noted down by him in the post mortem notes. In the post mortem notes, it is clearly indicated that death was due to shock and injury to brain which is vital organ and the injury was possible due to sharp heavy object. In view of the evidence led by the prosecution and more particularly the evidence of doctor Ranchhodbhai Raval which is corroborated by post mortem notes, we are of the view that the finding that deceased Sukliben died a homicidal death is eminently just and is hereby upheld.

9. So far as the main incident is concerned, the prosecution has examined 10 witnesses. Rameshbhai Sombhai Chaudhri PW 4 Exh.16 is the nephew of the deceased. He has claimed in his evidence that when he was making preparation for going to Madhi where he is serving in a sugar factory, his aunt i.e. deceased Sukliben had come to village well and the appellant got enraged on seeing the deceased and had dealt a blow with

an axe on her head. The witness has asserted that when he was on way to Madhi outpost for lodging complaint, he had met Babubhai son of the deceased and informed him about the incident. The witness has in no uncertain terms stated that he had accompanied Babubhai to Madhi Police outpost where Babubhai had lodged complaint. As far as motive is concerned, the witness has stated that the appellant entertained a suspicion that deceased Sukliben was a witch and daughter of the appellant had died as the deceased was practising sorcery. During his examination in chief, the witness was shown mudamal axe and after identifying the same, the witness claimed that it was the same axe with which the appellant had given blow on the head of the deceased. This witness has been cross-examined at length by the learned counsel for the appellant. However, nothing has been brought on record to discredit his version about the incident. The assertion made by this witness stands fully corroborated by the evidence of Babubhai Premabhai PW 2 Exh.8. This witness is also corroborated by medical evidence of Dr. Ranchhodbhai Raval. Similarly evidence of Padmaben Rameshbhai Sombhai PW 5 Exh.17 shows that the deceased was her aunt and in her presence as well as in presence of Rameshbhai Somabhai Chaudhari PW 4 Exh.16 and her son Nikunj Rameshbhai PW 13 Exh.25 the appellant had given blow with an axe on the head of the deceased as a result of which the deceased had died. Witness Pallaviben Ratilal Chaudhari PW 6 Exh.18 who is grand daughter of Sukliben has stated that on Marcy 8, 1988 when the deceased had come to public well, the appellant had given blow on the head of the deceased with an axe as a result of which her grand mother had died. The witness has clearly stated that at the time of incident, Hasumatiben PW 11 Exh.23, Ilaben PW 12, Exh.24, Jashuben PW 9 Exh.21, Padmaben PW 5 Exh.17, Rameshbhai PW 4 Exh.16, Nikunj PW 13 Exh.25 etc . were also present. Though this witness has been cross-examined searchingly on behalf of the defence, nothing has been brought out in her cross-examination which would make her assertion before the court doubtful in any manner. No major contradictions with her earlier police statements have been proved by the defence. It is not pointed out by the learned counsel for the appellant that she has improved her version in any manner before the court. Under the circumstances, reliance placed by the learned Judge on her evidence cannot be termed as erroneous at all. Her evidence also gets corroboration from evidence of eye witnesses (1) Chandanben Ratilal Somabhai PW 7 Exh.19 (2) Padmaben Rameshbhai Somabhai PW 5 Exh.17 (3) Deviben Sumanbhai PW 8 Exh.20 (4) Jashuben Vestabhai PW 9 Exh.21 (5) Tarulataben Balubhai Chaudhari PW 10 Exh. 22 (6)

Hasumatiben Sumanbhai PW 11 Exh.23 (7) Ilaben Sumanbhai Chaudhari PW 12 Exh.24 and (8) Nikunj Rameshbhai PW 13 Exh.25. All these eye witnesses have described in detail the incident and the manner in which the appellant had dealt blow with an axe on the head of the deceased. Though all witnesses have been cross-examined effectively on behalf of the defence, their evidence has remained unshaken. They have neither made improvement nor are they contradicted with their earlier statements, and therefore, their evidence on oath before the court will have to be accepted as true. The submission that evidence of witnesses examined by prosecution should be brushed aside as they are interested witnesses cannot be accepted. A close relative who is a very natural witness in the circumstances of a case cannot be regarded as an "interested witness ". The term " interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. We are unable to agree with the learned counsel for the appellant that the testimony of the eye witnesses requires corroboration on the reason that they are closely related to the deceased. This is a fallacy common to many criminal cases and that it unfortunately still persists, if not in the judgments of the court, at any rate in the arguments of counsel. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with guilty, but foundation must be laid for such a criticism. The fact of relationship far from being a foundation is often a sure guarantee of truth. In Guli Chand's case reported in A.I.R. 1974, SC, 276 it was pointed out that normally close relative of the deceased would not be considered to be interested witness who would falsely mention the names of other persons as responsible for causing injuries to the deceased. Thus, in the above referred to case also the Supreme Court has held that the witnesses concerned even though relatives could not be considered to be interested or partisan. So far as facts of the present case are concerned, the defence has not brought on record any enmity between the witnesses and the appellant. It is not brought out that the witnesses had a grudge against the appellant. As the defence has failed to lay

necessary foundation for branding the witnesses as interested witnesses, we are of the view that their evidence cannot be brushed aside on the ground that they are interested witnesses. The contention that as independent witnesses have not been examined, adverse inference against the prosecution should be drawn and the appellant should be acquitted has not merit. Section 134 of the Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact. All the circumstances vouched by the witnesses unerringly and irresistibly lead to the conclusion that the head injury was caused to the deceased by the appellant by means of an axe, and therefore, non examination of any witness loses its significance much less can it afford a ground for drawing an adverse inference against the prosecution. The testimony of the eye witnesses examined by the prosecution is found to be absolutely trustworthy and truthful, and therefore, the same cannot be rejected merely because some of the eye witnesses are not examined. In such a case, the question has to be determined is not whether absence of examination of the independent witnesses would vitiate the prosecution case by itself, but whether the evidence actually produced is reliable or not. Once the court gives a finding of fact that the evidence led by the prosecution is reliable and trustworthy, the infirmities arising out of non-examination of witnesses will not be sufficient to put the prosecution out of court. For these reasons, the submission that the version given by the prosecution witnesses should be disbelieved as independent witnesses have not been examined cannot be accepted and is rejected.

10. The circumstantial evidence led by the prosecution is also against the appellant. The evidence of Navinchandra Maganlal PW 15 Exh.28 shows that on March 9, 1988, he was summed at Bardoli Police Station and acted as a Panch. This witness has stated that on being questioned, the appellant had shown willingness to point out the place where he had concealed the axe. According to the witness, the appellant had taken him and the police personnel to a house and had brought out the axe which was concealed in roof. Though this witness is cross-examined searchingly, nothing has been brought on record of the case to discredit his version at all. The discovery panchnama prepared during the course of investigation is amply proved by witness Navinchandra Maganlal. From the contents of Panchnama Exh.29, it is evident that the blade of the axe was stained with blood. The Investigating Officer had sent articles seized during

the course of investigation to Forensic Science Laboratory for analysis. The report of the analyst shows that the blood having group "A" was found on the axe which was also the blood group of the deceased. Discovery of blood of same group on the weapon of offence indicates that the appellant was in close proximity of the deceased when deceased was fatally wounded. This circumstance which is against the appellant is not explained by him in any manner whatsoever. Thus, the circumstantial evidence on the record also implicates the appellant with the crime in question.

11. The last contention that the case would fall under part I or part II of Section 304 of the Indian Penal Code, and therefore, the sentence should be modified accordingly is devoid of merits. The prosecution has proved by leading reliable and trustworthy evidence that the appellant had given blow with an axe on the head of the deceased. The blow was given with such a force that there was fracture of left temporal bone going up to temporal sinus and brain was cut down interiorly due to incised wound. The resultant effect of the blow was such that the deceased had died on the spot. It is neither claimed by the appellant in his statement which was recorded under Section 313 of the Code of Criminal Procedure nor suggested to any of the witnesses that blow was aimed on some other part of body and because of the supervening cause like sudden intervention of someone or movement of the deceased it struck on her head. It was the intention of the appellant to cause that very injury which is found by medical evidence. The medical evidence on record clearly establishes that the injury was sufficient in the ordinary course of nature to cause death. In our view clause 3rdly of Section 300 is clearly attracted to the facts of the present case, and therefore, the appellant is rightly convicted under Section 302 of the Indian Penal Code for causing death of Sukliben.

12. Except the abovereferred to submissions, no other submission has been advanced on behalf of the appellant. The learned Judge has rightly appreciated the evidence. The conclusions reached by the learned Judge are fully born out from the record of the case. In view of the reliable and trustworthy version led by the prosecution, there is no manner of doubt that the appellant had caused death of deceased Sukliben by means of giving an axe blow on her head. We do not find any substance in the appeal and the appeal is liable to be dismissed.

13. For the foregoing reasons, the appeal fails and

is dismissed. Mudamal to be disposed of in terms of directions given by the learned Additional Sessions Judge, Surat, in the impugned judgment.

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Mithabhai.